SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 71

FEDERAL POWER COMMISSION,
Petitioner,

vs.

EAST OHIO GAS COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF STATE OF GEORGIA AS AMICUS CURIAE

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THE EAST OHIO GAS COMPANY, ET AL.,
Respondents

AMICUS CURIAE BRIEF

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Georgia, a sovereign State of the United States of America, files this brief in support of the petition for the motion for rehearing to the United States Court of Appeals for the District of Columbia, filed in this Court by the East Ohio Gas Company, respondents.

Interest of the Amicus Curiae

1. The sweeping effect of the majority opinion in the above named cause expands Federal Power Commission jurisdiction to the extent of curtailing and rendering ineffective current State commission regulation.

2. The legal position of the State of Georgia differs from that of the petitioner upon the question of the interpretation of the Natural Gas Act relative to interstate commerce.

3. The legal position of the State of Georgia differs from that of the petition upon the question of the power of the Federal Power Commission over state regulation of the flow of natural gas.

4. The State of Georgia, though not an original party to this cause, recognizes the usurping effect of a denial of the motion for rehearing in this cause and that such a denial will result in Federal encroachment upon the sovereign rights of the several States in their regulation of intrastate commerce.

Statement of the Case

East Ohio owns and operates a natural-gas business solely in Ohio, selling gas to more than a half-million Ohio consumers through local distributing systems. Most of this natural gas is transported into Ohio from Kansas, Texas, Oklahoma, and West Virginia through pipelines of Panhandle Eastern Pipe Line Company and of Hope Natural Gas Company, an affiliate of East Ohio. Inside the Ohio boundary these interstate lines connect with East Ohio's large high-pressure lines which the imported gas, propelled mainly by its own pressure, flows continuously more than 100 miles to East Ohio's local distributing systems.

The Federal Power Commission requested hearings and after such found that the East Ohio Company was a natural gas company and subject to the commission's jurisdiction. On these findings, the Company was ordered to keep accounts and submit reports as required by the Natural Gas Act, 15 U. S. C. 717. The Commission re-

jected the Company's contentions that its operations were not covered by the Act and that the expense of supplying the required information was so great as to transgress statutory and contitutional limits. The Court of Appeals for the District of Columbia, without reaching other contentions, reversed the commission's orders on the ground that the Company was not "engaged in the transportation of gas in interstate commerce within the meaning of the Act." Petitioner applied to the Supreme Court of the United States for writ of certiorari, which was granted, resulting in a majority decision in favor of the petitioner. The State of Georgia presents this brief, amicus curiae, in support of the respondent East Ohio Company, in their motion for rehearing.

Issues Involved

The questions presented by this petition, may be summarized as follows:

1. Does the Natural Gas Act grant to the Federal Power Commission the authority to regulate natural gas companies whose operations occur solely within the confines of one state, with no indulgence in actual interstate commerce?

2. Is local distribution of natural gas embraced in the Act's interpretation of interstate commerce so as to strip the States of their power of regulation?

3. Is a theory based on the particular points of "pressure" the logical and reasonable standard by which to measure the point of the beginning and ending of interstate commerce?

Argument and Citation of Authority

The purpose of the Natural Gas Act was not to preempt the field of regulation in favor of the Federal Power Commission, but rather as an aid to the States in their regulation of the flow of gas through interstate commerce to them.

The decision of this Court in the case of *Public Utilities Co.* v. *United Fuel Gas Co.*, 317 U. S. 465 stated:

> "It is clear as the legislative history of the Act demonstrates that Congress meant to create a scheme of regulation which would be complementary in its operation to that of the States, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate commerce, to the extent defined in the Act, and local matters would be left to the State regulatory bodies. Congress contemplated a harmonious, dual system of regulation of the natural gas industry—federal and State regulatory bodies operating side by side, each active in its own sphere."

This case clearly discloses the intention of the Congress upon passage of the Natural Gas Act. The question of whether or not Congress gave to the Federal Power Commission the authority to regulate the flow of gas in interstate commerce is therefore not disputed here. However, the majority opinion in the cause here interprets the Natural Gas Act to mean that the interstate commerce does not end at the point of distribution throughout the State, but rather, that interstate commerce continues to the point of consumption by the ultimate consumer, thereby stripping the State of its sovereign right to govern its intrastate commerce. Such construction as given in the cause at bar is in direct conflict with the intention of Congress and the previous decisions of this Court. This Court, in the case of *Pennsylvania*

Gas Company v. *Public Service Commission*, 252 U. S. 23, said:

> "While the manner in which the State business is conducted is part of interstate commerce, its regulation in the distribution of gas to the local consumers is required in the public interest and has not been attempted under the superior authority of Congress."

Further:

> "It may be conceded that the local rates may effect the interstate business of the company. But this fact does not prevent the state from making local regulations of a reasonable character."

It is well to note that the litigation here involved a gas company whose operations extended from its plant in one State to the ultimate consumer in another. To more vividly emphasize the point presented here, there was also no intervening agent, such as the East Ohio Company, but rather, the gas was sold direct from the distributor in the one State to the ultimate consumer in another.

It is our earnest contention that the operation of the East Ohio Company fell not within the jurisdiction of the Federal Power Commission. The distribution by the East Ohio Company, being local in its nature, is purely intrastate commerce and therefore the subject of State regulation. In *Public Utilities Commission* v. *Landon*, 249 U. S. 236, headnote #2, this Court held:

> "The sale and delivery of gas to customers at burner tips by local distributing companies operating under special franchises, *and the payment of two-thirds of their receipts to the natural gas companies furnishing the gas through interstate pipe lines, do not constitute any part of interstate commerce* so as to exclude state regulation of local rates as confiscatory and unduly burdening such commerce." (Emphasis ours.)

The cause at bar is analogous to the above cited case, and we most earnestly request this Court's reliance upon the same as authority.

Authority for the decision of the cause at bar, is the case of *Illinois Natural Gas Company* v. *Central Illinois Public Service Commission*, 314 U. S. 498, which case, is not analogous to the issues involved here. In the *Illinois* case, supra, the gas was obtained for the purpose of *resale* to local distributing companies, and therefore within the purview of the Act. In the cause at bar, however, the distributing company and the receiving company (that company that received the gas from the pipes in interstate commerce) are one and the same. The gas is sold direct to the ultimate consumer by the East Ohio Company. There is no intervening seller, as is anticipated by the Act, and the business of the East Ohio Company is clearly a matter of public necessity and is intrastate commerce, which, as a consequence, falls without the jurisdiction of the Federal Power Commission. Further emphasizing this point is headnote # 4 of the *Illinois* case, *supra:*

> "The extension of the facilities of a local pipe line selling at wholesale gas which it acquires by connection with an interstate pipe line within the state is so intimately associated with the interstate movement of natural gas as to be within the regulatory power of Congress, even though, *strictly considered, the interstate commerce in bringing the gas into the state ends before its delivery by the local pipe line to distributors within the state.*" (Emphasis ours.)

Considering the variance of the two factual situations, the Illinois case cannot be said to be authority for the decision of the majority in the cause at bar.

II

The majority opinion states:

> "In a series of cases repeatedly called to the attention of the House Committee, this Court has declared that the States could regulate interstate gas only after it was reduced in pressure and entered a local distributing system. (Citations) Under these decisions state regulatory power could not reach high pressure trunklines and sales for resale. This was the gap which Congress intended to close."

While the sale of gas for resale is provided for in the Act itself, we cannot hold tenable the application of any particular points of pressure in deciding where interstate commerce ends and intrastate commerce begins. To hold that such was the intention of the Act is folly. This Court declared in *Central States Electric Company* v. *Muscatine*, 324 U. S. 137, 89 L. Ed. 801:

> "The Natural Gas Act clearly discloses that, though its purpose may have been to protect the ultimate consumer at retail, the means adopted was limited to the regulation of sales in interstate commerce at wholesale, leaving to the State the function of regulating the intrastate distribution and sale of the commodity. That Congress intended to leave intrastate transactions to State regulation is clear, not only from the language of the Act, but from the exceptionally explicit legislative record, and from this Court's decisions."

Further in the case of:

Federal Power Commission v. *Hope Natural Gas. Co.*, 320 U. S. 591, this Court held:

> "The primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies . . . in accomplishing that purpose, the bill was designed to take no authority from

State commissions and was so drawn as to complement and in no manner usurp State regulatory authority."

We vehemently insist that the "pressure" theory, as used in the opinion of the majority was not the intention of Congress and is not the standard by which intrastate commerce can be equitably measured. The evils which were sought to be cured by the passage of the Act are not present in the cause at bar.

We wish to impress upon this Court the magnitude of the majority decision and the awe resulting effect a denial of this our motion for rehearing will have upon the rights of the sovereign States. We conscientiously support the view as expressed by Mr. Justice Jackson's dissent and urge this Court's indulgence in the affirmation of the same.

Conclusion

It is respectfully urged that the petition for rehearing be granted and that the decree of the United States Court of Appeals for the District of Columbia Circuit be, upon further consideration, affirmed.

Respectfully submitted,

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